IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 36 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

COMMISSIONER OF INCOME TAX

Versus

NAVDEEP INVESTMENT PVT.LTD.

Appearance:

1. INCOME TAX REFERENCE No. 36 of 1990
MR MANISH R BHATT for Petitioner No. 1
SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.L.DAVE

Date of decision: 29/03/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

The Income Tax Appellate Tribunal, Ahmedabad Bench `A', has referred the following question of law under Section 256 (1) of the Income Tax Act, 1961:-

1. "Whether, the Appellate Tribunal is right in law in upholding the claim of the assessee that the investment in shares is business income and therefore interest on that investment would go under business income.?"

The relevant assessment year was 1981-82. The assessee filed return of income on 25-8-1981 declaring total income of Rs.3362/-. The assessee Company is an investment Company, and it declared dividend income and interest income at Ahmedabad, but the same was shown as part of the business income. As regards the question which has been referred, the Income Tax Officer has observed that the interest referable to investment in shares exceeded the dividend income when normal rate of interest of 13.5% was applied to the investment. He worked out interest payable at Rs.94,766/- while the dividend income at Rs.60,000/-. As there was deficit, no deduction was admissible under Section 80-M as held by the I.T.O. In appeal, it was pleaded by the assessee that deduction should be granted under Section 80-M since the assessee was an investment Company. The C.I.T. (Appeals), held that deduction was not allowable. The Tribunal accepted the assessee's case that there was direct relationship between borrowal and investment in shares. In the present case, the assessee was claiming status of an investment Company and since there was nexus between borrowal and investment in shares, the interest on the borrowal for the purpose of shares could be regarded as expenditure for the purpose of business since the Tribunal upheld the finding that the assessee was an investment Company. The Tribunal was right in accepting the assessee's contention that the interest on the borrowals for the purpose of shares must be regarded as an expenditure for the purpose of business not covered by Section 56 but by Section 36(1). The Tribunal was, therefore, right in upholding the claim of the assessee that the investment in shares was business income, and therefore, interest on that investment would go under business income. The question referred to us is, therefore, answered in the affirmative, in favour of the assessee and against the revenue. The Reference stands disposed of accordingly, with no orders as to costs.

(R.K.Abichandani,J.)

(A.L.Dave,J.)

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